



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRAMIL S.R.L. (ESAPHARMA),
Petitioner,

vs.

MICHEL FARAH,

Registrant.

Cancellation No. 92032341

MOTION TO STRIKE TESTIMONY DEPOSITION
OF MICHEL FARAH

Petitioner, Pramil S.R.L. (ESAPHARMA), respectfully move this Honorable Board for an Order striking the Trial Deposition transcript and exhibits, filed by Registrant on or about April 27, 2005.

The testimony deposition was taken long after the time for the Registrant to take his testimony had closed. Accordingly, the testimony transcript should not be considered and should be stricken.



05-02-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #39

By virtue of several granted extensions of time, the Registrant's testimony period was extended to close on February 28, 2005. In fact the testimony submitted by the Registrant at this late date was not even taken until March 29, 2005, one month after the testimony period closed.

A further attempt to extend the testimony period after it had closed was denied by the Interlocutory Attorney in a decision rendered on March 28, 2005.

It should be noted that counsel for the Petitioner did not attend the deposition and in fact was out of the country on business when the late Notice was sent to his Office by facsimile. As noted on page 5 of Petitioner's Response to Registrant's third Request for Extension, counsel for Registrant was fully aware that Petitioner's counsel would be on an extended three week trip beginning on March 12, 2005.

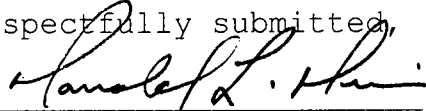
As set forth in 37 CFR §2.121(a)(1);

The Trademark Trial and Appeal Board will issue a trial order assigning to each party the time for taking testimony. *No testimony shall be taken except during the times assigned, unless by stipulation of the parties approved by the Board, or, upon motion, by order of the Board.* (emphasis added)

Clearly here the testimony was improperly taken outside of Registrant's testimony period. A motion to strike is the appropriate remedy here. See TBMP §707.03(b)(1).

Accordingly the transcript should be held *ne recipiatur* and this Motion to Strike granted.

Respectfully submitted,



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May 2, 2005

CERTIFICATE OF SERVICE

I certify that a copy of the above Petitioner's Motion to Strike was served by first class mail with proper postage affixed this 2nd day of May, 2005 on counsel for Registrant, David M. Rogero, Esq., 2600 Douglas Road, Suite 600, Coral Gables, FL 33134.



Donald L. Dennison